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100th Congress
2d Session

HOUSE OF REPRESENTATIVES

Rept. 100-816
Part II

IMPLEMENTING THE UNITED STATES-CANADA FREE-TRADE AGREEMENT

August 3, 1988.—Ordered to be printed

Mr. Udall, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 5090]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 5090) to implement the United States-Canada Free-Trade Agreement, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. Purpose

H.R. 5090 approves and implements the United States-Canada Free Trade Agreement signed by the President on January 2, 1988 under the authority of section 102 of the Trade Act of 1974 (19 U.S.C. 2112). The Agreement is intended to strengthen and develop economic relations, to establish a free-trade area through the reduction and elimination of trade and investment barriers, and to lay the foundation for further cooperation between our two countries.

II. Scope of the Committee's Review

H.R. 5090 affects laws and programs under the jurisdiction of this and seven other committees of the House of Representatives, to which the bill has been jointly referred. The Committee's consideration of the bill focused on two matters within the Committee's jurisdiction. First, the Committee considered section 305(b) of the bill, which exempts Canada from restrictions on the enrichment of foreign uranium. Second, the Committee examined proposed changes to the intertie access policy of the Bonneville Power Administration set forth in the Statement of Administrative Action which is approved by section 102(a)(3) of the bill.

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III. Uranium Enrichment

EARLY HISTORY OF THE UNITED STATES-CANADA URANIUM TRADE

The United States and Canada have a long history of close cooperation on nuclear energy matters dating back to the Manhattan Project, the wartime effort to develop the atomic bomb. During World War II, the United States counted on Canadian uranium mines to supplement the limited supply of uranium available from domestic and African sources, and on Canadian mills to refine both Canadian and African ores. The Canadian Government took control of the principal Canadian uranium producer to facilitate cooperation with the United States.

In the years immediately following the war, uranium production in this country ceased and the United States relied heavily on Canada for the uranium needed for our expanding weapons program. In 1948, however, the Atomic Energy Commission, one of the Department of Energy's predecessor agencies, embarked on a major effort to develop domestic sources of uranium for the weapons program. The Atomic Energy Commission guaranteed minimum prices for domestic uranium and paid bonuses for the discovery of new domestic ore deposits. By late 1950, for the first time since the war, domestic production exceeded imports from Canada. Nonetheless, the United States Government continued buying increasing amounts of Canadian uranium until 1959, after which Canadian purchases declined until they stopped in 1967.

SECTION 161V

H.R. 5090 amends section 161v. of the Atomic Energy Act of 1954, which Congress added to the Act in 1964. Prior to 1964, all enriched uranium in the United States by law was owned by the Government and virtually all was intended for military purposes. By 1964, the Atomic Energy Commission had accumulated sufficient stockpiles of nuclear weapons and weapons-grade uranium that President Johnson halted further production of weapons-grade uranium metal.

Meanwhile the commercial nuclear power program was emerging. Although there were only ten nuclear power plants in the United States generating a total of only 1,000 megawatts of electricity in 1964, the Atomic Energy Commission predicted that nuclear power would supply half the nation's electricity by the end of the century and that all new power plants built after that time would be nuclear. (House Report No. 1702, 98th Congress, 2d Session, p. 8.)

In light of these developments, Congress added section 161v. to the Atomic Energy Act to permit private ownership of enriched uranium and to permit the Atomic Energy Commission to enrich uranium for foreign and domestic utilities. Uranium must be "enriched" by increasing the concentration of fissionable atoms before it can be used either as weapons material or power reactor fuel. Until 1976, the United States Government alone enriched uranium for free world nuclear power plants.

In drafting section 161v., Congress recognized that there would be a gap in demand for uranium between the end of the Govern-

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ment's purchases for the military program and substantial purchases by private utilities for the commercial power program. To protect the domestic uranium industry during this time, section 161v. barred the Atomic Energy Commission from enriching uranium of foreign origin for use in the United States "to the extent necessary to assure the maintenance of a viable domestic uranium industry." The Atomic Energy Commission barred enrichment of foreign uranium for domestic use in accordance with section 161v. beginning in 1967 but provided for the gradual elimination of the restrictions by 1983. The Department of Energy, the Commission's successor, has not reimposed restrictions.

The large number of nuclear power plants forecast in 1964 and the demand for uranium they would have created never materialized and the fortunes of the domestic uranium mining industry fell. Cancellation of over one hundred nuclear power plants reduced the market for uranium and the discovery of richer and more cheaply produced uranium deposits in Canada and Australia increased competition for the remaining market. As a result, both uranium ore prices and production have dropped sharply and employment in the domestic mining and milling industry fell from over 20,000 workers in 1979 to less than 2,000 workers today.

In the absence of restrictions, the percentage of the uranium the Department enriches for domestic use that is mined in the United States has fallen. Currently, about 49 percent is mined in the United States, 47 percent is from Canada, and 4 percent is from Australia or other sources. The Department expects the share supplied by Canada to increase by 5 to 10 percent in the near future.

In view of the decline of the domestic uranium mining industry, Congress directed the Department of Energy in 1983 to establish criteria for assessing the viability of the industry and to issue annual reports on the industry's viability. Applying these criteria, the Department found the industry "nonviable" in 1984, 1985, and 1986.

In 1984, three uranium mining companies sued the Department of Energy for failing to restrict enrichment of foreign uranium as the industry claims section 161v. requires. The Department defended its refusal to restrict enrichment of foreign uranium on the grounds that section 161v. only requires the Department to impose restrictions "to the extent necessary to assure the maintenance of the domestic uranium industry." Since the Department of Energy no longer has a monopoly on enrichment services, the Department believes reimposing restrictions on enriching foreign uranium will cause its enrichment customers to turn to the Department's foreign competitors rather then forcing them to buy domestic uranium. If restricting enrichment of foreign uranium will not ensure the viability of the domestic industry, the Department contends, section 161 does not require the Department to restrict imports. Although the U.S. District Court and the U.S. Court of Appeals for the Tenth Circuit agreed with the mining companies, the U.S. Supreme Court sided with the Department's interpretation in the case of *Huffman* v. *Western Nuclear* decided on June 15, 1988. The Supreme Court remanded the case to the District Court to consider whether the Department was factually correct that import restrictions would not ensure viability.

THE FREE TRADE AGREEMENT AND H.R. 5090

The United States-Canada Free Trade Agreement contains two provisions affecting uranium trade between our two nations. Paragraph 1 of Annex 902.5 to the Agreement provides that the United States will exempt Canada from any restriction on enrichment of foreign uranium that might be imposed under section 161v. of the Atomic Energy Act. Paragraph 2 of Annex 902.5 provides that Canada will exempt the United States from the Canadian Uranium Upgrading Policy announced by the Minister of State for Mines on October 18, 1985. The upgrading policy currently requires that all uranium be converted to uranium hexafloride before it is exported from Canada, thus hindering U.S. conversion companies' ability to compete for conversion services.

Section 305(b) of H.R. 5090 implements paragraph 1 of Annex 902.5. Section 305(b) of H.R. 5090 amends section 161v. of the Atomic Energy Act by stating that for purposes of section 161v. and section 305 of Public Law 99–591, the term "foreign origin" excludes uranium originating in Canada. As discussed earlier, section 161v. of the Atomic Energy Act now provides that the Department of Energy, "to the extent necessary to assure that maintenance of a viable domestic uranium industry," shall not enrich uranium of foreign origin intended for use in a reactor within or under the jurisdiction of the United States. Section 305 of Public Law 99–591 provides that enrichment of foreign-origin uranium may continue unless the courts issue a final judgment in *Huffman* v. *Western Nuclear* that section 161v. requires restriction of enrichment of foreign-origin uranium.

EFFECT OF H.R. 5090 ON THE DOMESTIC URANIUM INDUSTRY

The Committee continues to believe that a sound domestic uranium mining and milling industry is essential to the national defense and security of the United States as well as to the economic stability and independence of the nation's energy supply. Even if the United States were to disarm all of its nuclear weapons and never build or license another nuclear power plant, over 200 nuclear-powered ships in the U.S. Navy and over 100 commercial power plants supplying nearly 20 percent of the nation's electricity will continue to depend upon a reliable supply of affordable uranium into the next century. Accordingly, the Committee is deeply concerned by the depressed state of the domestic uranium mining and milling industry.

Administration witnesses testified before the Subcommittee on Energy and the Environment that H.R. 5090 will not, in itself, further harm the domestic uranium industry. The Director for Energy and Natural Resources Trade Policy of the Office of the U.S. Trade Representative testified that Canadian uranium has been free of enrichment restrictions for about the last eight years and thus H.R. 5090 merely codified recent and current policy. The Department of Energy testified that, even in the absence of import restrictions, employment in the domestic uranium industry will remain steady or decrease only slightly during 1988 and will increase by about 500 employees by the end of the century.

Nevertheless, enactment of H.R. 5090 will prevent a future administration from restricting the enrichment of Canadian uranium to protect domestic producers. While a future administration could still impose restrictions on uranium from other nations, restrictions on other nations probably would prove ineffective to aid domestic uranium producers since over 90 percent of the foreign uranium enriched by the Department of Energy for use in U.S. reactors now comes from Canada.

The Committee recognizes that if import restrictions become unavailable to protect the domestic uranium industry it may become necessary to enact other measures. The Administration has proposed legislation to pay one billion dollars to help clean up the industry's mill tailings wastes and to purchase $750 million of uranium for Government stockpiles. The Subcommittee on Energy and the Environment held a hearing on the Administration's proposal on June 28, 1988. The Committee will continue to monitor the health of the domestic uranium industry and to consider measures necessary to protect it.

IV. Bonneville Intertie Access Policy

CURRENT POLICY

Transmission lines owned by the Bonneville Power Administration make up part of the Pacific Northwest-Pacific Southwest Intertie which unites electricity generating and transmitting systems throughout the western United States and western Canada with each other. The Bonneville Power Administration transmits electric power generated by other U.S. and Canadian utilities over its portion of the Pacific Northwest-Pacific Southwest Intertie if transmission capacity is available. Under Bonneville's current policy, priority is given first to U.S. utilities in the Pacific Northwest and then to U.S. utilities located outside the Pacific Northwest. Lastly, Bonneville affords Canadian utilities the opportunity to transmit electricity to California if transmission capacity is available after scheduling U.S. utilities. This policy places British Columbia Hydro at a competitive disadvantage in attempting to market its electricity in the United States.

THE FREE TRADE AGREEMENT AND H.R. 5090

Annex 905.2 of the Free Trade Agreement commits the United States to causing the Bonneville Power Administration to modify its intertie access policy so as to afford British Columbia Hydro treatment no less favorable than the most favorable treatment afforded to utilities outside the Pacific Northwest. In addition, Annex 905.2 calls upon Bonneville and British Columbia Hydro to negotiate arrangements furthering electricity trade between the United States and Canada but does not require any specific negotiations, arrangements, or other changes in policy.

Because legislation is not needed to implement Annex 905.2, H.R. 5090 is silent on the Bonneville Power Administration's intertie access policy. Section 101(a)(3) of the bill approves the Statement of Administrative Action proposed to implement the Free Trade Agreement, however, and section B.3 of Chapter 9 of the Statement

of Administrative Action states that Bonneville will modify its Intertie Access Policy as provided in Annex 905.2.

EFFECT ON PACIFIC NORTHWEST PREFERENCE

While Annex 905.2 commits the Bonneville Power Administration to give British Columbia Hydro treatment no less favorable than the most favorable treatment afforded to utilities outside the Pacific Northwest, the Free Trade Agreement does not affect the Bonneville Power Administration's policy of providing priority access to the intertie to Pacific Northwest utilities over utilities located outside the Pacific Northwest. The Statement of Administrative Action states that Free Trade Agreement is intended to express no position on the legality or appropriateness of the Bonneville Power Administration's Pacific Northwest preference policy.

V. Committee Action

Three of the Committee's subcommittees held hearings on aspects of the Free Trade Agreement before H.R. 5090 was introduced. The Subcommittee on Mining and Natural Resources held a hearing on the potential impact of the Free Trade Agreement on domestic mining and natural resources on March 10, 1988. The Subcommittee on Water and Power Resources held a hearing on the potential impact of the agreement on California and Pacific Northwest power resources on April 19, 1988. The Subcommittee on Energy and the Environment held a hearing on the effect of the agreement on the domestic uranium industry on June 28, 1988.

The Committee favorably reported H.R. 5090 to the House by voice vote on August 3, 1988. Under the procedure for considering bills implementing trade agreements established by section 151(d) of the Trade Act of 1974 (19 U.S.C. 2191), no amendment to H.R. 5090 was in order in the Committee.

VI. Oversight Statement

The Committee received no oversight findings or recommendations from the Committee on Government Operations under clause 4(c)(2) of Rule X of the Rules of the House of Representatives.

VII. Cost and Inflationary Impact

The Committee does not expect that enactment of section 305(b) of H.R. 5090 or implementation of section B.3 of chapter 9 of the Statement of Administrative Action will have a significant inflationary impact on prices and costs in the operation of the national economy. No cost estimate was received from the Congressional Budget Office prior to the filing of this report; however, it is the understanding of the Committee that a comprehensive analysis of the bill will be available prior to action on the legislation by the House.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Provisions of H.R. 5090 within the jurisdiction of the Committee on Interior and Insular Affairs

SECTION 161 OF THE ATOMIC ENERGY ACT OF 1954

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

a. * * *

* * * * * * *

v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time: *And provided further,* That the Commission, to the extent necessary to assure that maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. *For purposes of this subsection and of section 305 of Public Law 99-591 (100 Stat. 3341-209, 210), "foreign origin" excludes source or special nuclear material originating in Canada.* The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

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